(3)

CFR 25-00

3/10/94

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

WRIT PETITION No. 2785 /1994.

S B (Civil)

PETITIONER:

M.P.Van Vikas Nigam Ltd.,
Devendranagar,Raipur,
through the Divisional Manager,
Barnawapara Project Division,
Devendranagar, Raipur.

V e r s u s.

RESPONDENTS :

1. Shri AR Quereshi,
Aged About 40 years,
S/o Shri Abdul Rajjak Quereshi,
Shyamnagar(Ravigram)
Raipur.

2. The Presiding Officer,
Labour Court,
Durg,M.P.

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

AFR (29)

19.4.06

HIGH COURT OF CHHATTISGARH AT BILASPUR
Writ Petition No. 2604 of 1994

Petitioner : A.R. Qureshi

Versus

Respondents : M.P. Van Vikas Nigam and another

Shri Vinod Deshmukh, counsel for the Petitioner.
Shri B.D. Guru, counsel for the respondent No. 1.
None for the respondent No. 2.

And

Writ Petition No. 2785/1994

Petitioner : M.P. Rajya Van Vikas Nigam Ltd.

Versus

Respondent : Shri A.R. Quereshi

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri B.D. Guru, counsel for the Petitioner.
Shri Vinod Deshmukh, counsel for the respondent.

ORAL ORDER

(19th April, 2006)

1. The petitioner namely A.R. Quereshi in W.P. No.2604 of 1994 has challenged the impugned award dated 7.3.1994 passed in Case No. 6/93/I.D. Act (Ref.) to the extent that the petitioner was not granted back wages.

2. The employer namely M.P. Van Vikas Nigam Ltd. has challenged the same impugned award in W.P. No. 2785/1994 on the ground that the order of reinstatement is erroneous as there is apparent error on the face of the record. Both the petitions are being considered and decided by this common order in view of the fact that the same award dated 7.3.1994 is under challenge in both the petitions.

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3. The facts in nutshell are that the employee, Shri A.R. Quereshi, was appointed on daily wages basis as Driver in the year 1981. Thereafter by order dated 29.11.1986 (Annexure P/3), the employee was regularized and confirmed on the post of Driver w.e.f. 21.1.1984. By order dated 15.2.1988, service of the employee was retrenched following the provisions of Section 25-F of the Industrial Disputes Act, 1947 after making payment of retrenchment compensation to the tune of Rs. 3282.50. A sum of Rs. 3939/- was paid in lieu of the notice period of one month. In total, a sum of Rs. 7225.50 was paid to the employee.

4. Being aggrieved, the dispute was raised. The Deputy Labour Commissioner (C.G.) by his letter dated 21.6.1993 referred the dispute to the Labour Court. The Labour Court after considering the facts of the case and depositions of the witnesses produced by both the parties came to the conclusion that Rule 77 of the Madhya Pradesh Industrial Disputes Rules, 1957 was not complied with.

5. Shri Vinod Deshmukh, learned counsel appearing for the employee submits that the employer has not produced gradation list/seniority list. Learned counsel further submits that the employee was denied back wages without any reason when it was clearly held by the Labour Court that retrenchment was improper and invalid.

6. Shri B.D. Guru, learned counsel appearing for the employer contends that the award is erroneous as Shri R. B. P. Sinha, who was admitted as employer's witness, has not stated in his cross examination that the seniority list was not prepared and the retrenchment of the employee was not in accordance with

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the gradation list as contemplated under Rule 77 of the Madhya Pradesh Industrial Disputes Rules, 1957.

7. I have heard learned counsel for the parties and gone through the documents appended to the pleadings in both the petitions.

8. On perusal, it is found that the award is erroneous on its face. Shri R. B. P. Sinha has stated in his cross examination that he was not aware about the seniority list which was prepared at Bhopal. Shri Sinha has also not admitted that the gradation list was not followed while passing the order of retrenchment of the petitioner/employee. The Labour Court has proceeded on the wrong presumption that the witness Shri R.B.P. Sinha has admitted in his cross examination that the employee, Shri A.R. Quereshi was not retrenched after following seniority list as contemplated under Rule 77 of the Madhya Pradesh Industrial Disputes Rules, 1957.

9. For the reasons stated-above, the impugned award is perverse and erroneous. However, in the interest of justice, the matter is remitted back to the Labour Court to consider case of the employer as well as that of the employee on merit in accordance with law. Observations made above will not come in the way of the decision of the Labour Court on merit, in accordance with law.

10. Accordingly, both the petitions are disposed of and the matters are remitted back to the Labour Court for decision, in accordance with law, within a period of four months from the date of receipt of a copy of this order.

Sd/-
Satish K. Agnihotri
Judge

Bablu